IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1159 of 2001

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT LAND DEVELOPMENT CORPORATION LTD.

Versus

DAHYABHAI KODARBHAI PATEL

Appearance:

1. Special Civil Application No. 1159 of 2001

MR HS MUNSHAW for Petitioner No. 1-2

MR YV SHAH for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 23/09/2004

ORAL JUDGEMENT

In this petition the petitioner has challenged the order dated 17th September, 1999 passed by the Labour Court, Godhra, in Recovery Application No.81 of 1997 as

well as the subsequent order dated 5th January, 2001 by which the application of the petitioner being Misc. Application No.53 of 2000 seeking setting aside the order of the ex parte order was also rejected.

2 Shortly stated, the facts leading to the present petition are that the respondent-workman had filed Recovery Application No.81 of 1997 before the Labour Court, Godhra, claiming benefits of certain circulars of the Government and an amount of Rs.51,759/- pursuant thereto. The Labour Court, Godhra, by its impugned order dated 17th September, 1999 was pleased to allow the Recovery Application ex parte since the petitioner did not participate in the proceedings. The petitioner challenged the said order before this High Court by filing Special Civil Application No.10242 of 1999. This petition, however, came to be disposed of by recording that there is alternative remedy available to the petitioner under Rule 26A of the Industrial Disputes Gujarat Rules, 1966. The petitioner was given three months time to file such an application.

3 The petitioner filed an application within 3 months as permitted by this Court and sought review of the order and later on, having realised that review application is not maintainable, withdrew the same and filed proper application seeking setting aside of the ex parte order. This application being Misc. Application No.53 of 2000 came to be rejected by the Labour Court by its order dated 5th January, 2001.

4 Having heard the learned counsel for the petitioner and considering the facts arising in this petition, I find that the Labour Court erred in not permitting the petitioner to represent its case. It is true that the petitioner had not participated in the proceedings on the first round. However, when the petitioner approached the Labour Court, as permitted by this Court, and made out sufficient grounds for setting aside the ex parte order the Labour Court ought to have considered and allowed the same especially keeping in mind that by the impugend order the Labour Court was directing payment of substantial amount in excess of Rs.50 thousand to be paid to the respondent-workman from public exchequer. I am, therefore, of the opinion that the impugned orders are required to be set aside and the matter is required to be remanded to the Labour Court for fresh consideration on merits. This, however, cannot be done unconditionally and the respondent is entitled to be paid the cost for the litigation.

5 In the result, the impugned orders dated 17th September, 1999 and 5th January, 2001 passed by the Labour Court, Godhra, are quashed and set aside and the matter is remanded to the Labour Court for fresh consideration on merits after permitting both the sides to lead the evidence if they so desire. It is expected that the petitioner shall cooperate with the expeditious disposal of the recovery application, which may be endeavoured to be disposed of within four months from the date of receipt of copy of the order as far as possible. The petitioner is directed to pay a cost of Rs.10,000 to the respondent. The petition is allowed. Rule is made absolute.

(Akil Kureshi, J.)

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